IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CEA No.49 of 2006
Date of decision:23.10.2006

Commissioner, Central Excise Commissionerate, Jalandhar (HQRS. At Chandigarh)

....Appellant

versus

M/s. Mukerian Paper Limited, GT Road Mukerian, District Hoshiarpur (Pb.)

....Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. M.S.Guglani, Central Govt. Counsel for the appellant.
Mr. Jagmohan Bansal, Advocate, for the respondent.

JUDGMENT:

This appeal has been preferred by the revenue against order dated 9.6.2005 passed by the Customs, Excise & Service Tax Appellate Tribunal, New Delhi in Appeal No.F/3688/04/NB-S, proposing following substantial questions of law:-

> "a) Whether party is liable to pay equivalent penalty as per specific provisions of Rule 173Q of the Central Excise Rules, 1944, read with Section 11AC of the Central Excise Act, 1944 or the same is discretionary and can be reduced?
>
> b) Whether in the light of clear cut mens rea the party ought to be penalised with the equal amount of the duty evaded or the same can be reduced?"

The assessee was availing exemption during April 2000 to July 2000 under Notification No.6/2000-CE dated 1.3.2000 and 36/2000/CE dated 4.5.2000. The assessee, however, failed to reverse credit availed on the inputs in stock for which duty was held to be payable. The assessee debited the amount of Modvat credit taken. The adjudicating authority imposed penalty equal to the amount of duty but the Commissioner (Appeals) reduced the same from Rs.3,29,988/- to Rs.50,000/- on the

ground that the assessee had no mens rea. The said view has been upheld by the Tribunal.

Learned counsel for the revenue is unable to show that delay by the assessee in not reversing the modvat credit was with a view to deliberately evade payment of duty. In absence of mens rea, we are unable to hold that any substantial question of law arises.

Accordingly, the appeal is dismissed.

(Adarsh Kumar Goel)
Judge

October 23, 2006
'gs'

(Rajesh Bindal)
Judge